



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing the Lease Agreement Between the City of Lodi and the State of California, Acting By and Through its Director of General Services, with the Consent of the Military Department for the Use of the National Guard Armory Building

MEETING DATE: February 17, 2010

PREPARED BY: Steve Dutra, Park Superintendent

RECOMMENDED ACTION: Adopt resolution authorizing the lease agreement between the City of Lodi and the State of California, acting by and through its Director of General Services, with the consent of the Military Department for the use of the National Guard Armory Building.

BACKGROUND INFORMATION: For well over a year the City and the State of California have been discussing the potential renewal of the existing lease agreement for joint use of the Armory facility located at 333 N. Washington Street. The existing lease expired in December 2007. The City and State have negotiated terms of a five-year lease that will give the City use of the Armory through December 31, 2014.

Because the City does not currently own or operate indoor gymnasium facilities on a year-round basis, it relies upon leases and joint-use agreements to secure the facilities of other agencies in order to provide programs requiring a gymnasium. The local Armory building has hardwood flooring striped for one full-size basketball court, two small cross courts and side-by-side volleyball courts. The building houses restrooms, storage room and a common area that can be used for small meetings and waiting parents.

Elements of the lease include a five-year term with City use of approximately 10,199 square feet of the total building area of 18,507 square feet. The Department of General Services has determined the current "Fair Market Rent" for the premises at \$1,785. The State acknowledges Lessee is providing maintenance services and agrees to a \$600 in-lieu credit, making the monthly rental payment amount of \$1,185 which is an increase of \$73 per month from the previous contract as amended.

The State is requiring an administrative fee of \$3,000 for lease preparation and the lease may be terminated by the City at any time with a 90-day written notice. The lease also contains a requirement that the City will cease activities in the event of a declared national or State emergency and/or military mobilization. City of Lodi will reimburse the State for utility fees that exceed the State's average monthly expenses of \$1,158 based upon previous utility bills. National Guard personnel will provide to the City a listing of home Reserve Duty dates and the City will coordinate uses of the facility accordingly.

Should this lease be approved, Parks and Recreation will jointly use the facility under this lease for programming a variety of recreational activities for youth and adults on a year-round basis. This renewal

APPROVED:

A handwritten signature in black ink, appearing to read "Blair King", written over a horizontal line.

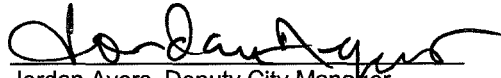
Blair King, City Manager

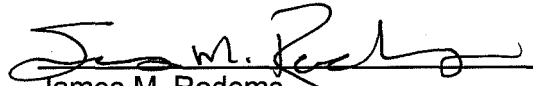
allows Lessee to "sublet." Subletting activities shall be considered "Lessee-sponsored" events. Programming will be developed to utilize the facility as fully as possible.

The Recreation Commission reviewed staffs recommendation to renew the lease agreement at its February 2, 2010, meeting (see attached minutes).

FISCAL IMPACT: \$1,185 per month (\$14,220 annually) Lease Payments plus utilities and administrative expenses of \$3,000.

FUNDING AVAILABLE: Rent is paid out of general operating account #346011.7321 (Rent of Land, Facilities). Parks and Recreation recovers a portion of this cost through user fees.


Jordan Ayers, Deputy City Manager


James M. Rodems
Interim Parks and Recreation Director

JMR\SD:tl

cc: City Attorney

MINUTE ORDER
Lodi Recreation Commission Meeting of February 2, 2010

REGULAR AGENDA ITEM B -
NATIONAL GUARD ARMORY BUILDING LEASE

Mr. Dutra introduced this item. The differences between the contracts are: the rental offset for external maintenance is now \$600 instead of \$250; the rent will increase \$700 based on the States interpretation of the fair market value which includes a 50% disruption clause. The other difference is the State previously based their rental rate on property the City previously owned in the adjacent area. The lease will be going to City Council for approval at their February 17 meeting.

Mr. Rodems commended Mr. Dutra for staying with this process. Mr. Rodems stated that the previous agreement prevented us from subleasing this facility and we are now able to do this with the new agreement which will allow for additional revenue.

Mr. Dutra commended Sgt. Thomas Lane for his support through this process.

Commissioner Wall asked if the 5 year agreement is based on available funding. Commissioner Wall asked if Council did not approve the funding in the following year how does that impact the agreement. Mr. Rodems stated the funding for the rental does not come under the purview of the Council it is a program component based upon our revenues.

Commissioner Wardrobe-Fox asked if there's a rent escalator or is it a flat rate for each of the 5 years of the contract. Mr. Rodems stated it is a flat rate.

ATTEST:

Terri Lovell
Administrative Secretary

BUILDING SPACE LEASE

<u>LEASE COVERING PREMISES LOCATED AT</u>
LODI ARMORY 333 N. WASHINGTON STREET LODI, CA 95240
<u>AGENCY</u>
MILITARY DEPARTMENT
Real Property # 604

LEASE NO. L-2015

This Lease dated for reference purposes only September 9, 2009, by and between the State of California, acting by and through its Director of General Services (DGS), with the consent of the Military Department, hereinafter referred to as STATE and the City of Lodi, a political subdivision of the State of California, hereinafter referred to as LESSEE.

RECITALS

WHEREAS, the STATE has under its jurisdiction, certain real property located at 333 N. Washington Street, City of Lodi, County of San Joaquin, State of California, 95240, also known as the Lodi Armory; and

WHEREAS, pursuant to Government Code 14670(a)(1), the Director of the Department of General Services, with the consent of the Military Department, is authorized to let State real property for a period not to exceed five (5) years if the Director deems such letting is in the best interest of the STATE; and

NOW, THEREFORE, it is hereby mutually agreed as follows:

WITNESSETH:**DESCRIPTION**

1. The STATE does hereby lease to LESSEE, and LESSEE does hereby hire from STATE, upon the terms, agreements, and conditions hereinafter set forth, those certain Premises as outlines on the attached plat and floor plans designated as Exhibit "A", consisting of two (2) pages, attached hereto and made a part therein by this reference and more particularly described as follows:

Building located at 333 N. Washington Street, City of Lodi, County of San Joaquin, State of California 95240, consisting of approximately 10,199 square feet of the total building area of 18,507 square feet together with its adjacent parking lots and grounds. These areas include offices in Rooms 1 and 16 and area 20, the assembly area. LESSEE shall have exclusive use of the offices located in Rooms 1 and 16 and either Room 14 or 15 for storage. Area 20, the assembly area, lounge, kitchen, restrooms and showers may be used by both the STATE and LESSEE. The LESSEE is not allowed to use the stove in the kitchen. The Premises do not include the area designated as the armament safe which by law

DESCRIPTION (CONT)	must exclusively be used by the State of California or the United States Government.
TERM	2. The term of this Lease shall be for five (5) years, commencing January 1, 2010 and ending December 31, 2014, with such rights of termination as are hereinafter expressly set forth.
USE	3. The Premises shall be used by LESSEE, during the term hereof, for the purpose of operating community oriented recreational programs and other community oriented programs, services and related office functions and for no other purpose whatsoever.
RENT/OFFSETS	<p>4. a) DGS has determined the current "Fair Market Rent" for the Premises is ONE THOUSAND SEVEN HUNDRED EIGHTY-FIVE AND NO/100 DOLLARS (\$1,785.00) per month.</p> <p>b) STATE acknowledges LESSEE is providing maintenance services to the Premises as outlined in Exhibit "B", consisting of one (1) page, attached hereto and made a part herein by reference. STATE shall provide in lieu credit of SIX HUNDRED AND NO/100 DOLLARS (\$600.00) per month to LESSEE, described in Exhibit "C", consisting of one (1) page, attached hereto and made a part hereof by reference.</p> <p>c) LESSEE shall make monthly rental payments, fair market rent less maintenance services credit, monthly in advance, on the first (1st) of each month, in the amount of ONE THOUSAND ONE HUNDRED EIGHTY-FIVE AND NO/100 DOLLARS (\$1,185.00).</p> <p><u>Rental payments are to made payable to:</u></p> <p style="padding-left: 40px;">Department of the Military P. O. Box 269101 (L-2015) Facilities (Box 21) Sacramento, CA 95826</p> <p>a) If at any time during the term of this Lease, should LESSEE fail to provide ongoing landscape maintenance services, such failure shall constitute forfeiture by LESSEE of all in lieu rents credits/offsets and rent will return to the original Fair Market Value of \$1,785.00.</p>
UTILITIES	5. LESSEE shall, at its sole cost and expense, reimburse the STATE for utility fees that exceed the STATE'S average monthly expenses of ONE THOUSAND ONE HUNDRED FIFTY-EIGHT AND NO/100 DOLLARS (\$1,158) based upon previous utility bills. LESSEE will be billed and will pay the STATE monthly for their portion of the prior month's utility bills. Utilities include, but are not limited to gas, electric water, sewer and trash disposal.
DEFAULT	6. LESSEE shall pay said rent to the STATE without deduction, default or delay. In the event of the failure of LESSEE to do so, or in the event of a breach of any of the other terms, covenants or conditions herein contained on the part of LESSEE to be kept and performed and if such default continues for a period of thirty (30) days after receipt of written notice from STATE to LESSEE of such default, this Lease shall be terminated.

**DEFAULT
(CONT)**

a) In the event of termination of this Lease, it shall be lawful for STATE to reenter into and upon the premises and every part thereof and to remove and store at LESSEE'S expense all property there from and to repossess and occupy the Premises. In the event STATE terminates this Lease pursuant to this paragraph, the STATE shall not be required to pay LESSEE any sum whatsoever.

TERMINATION

7. The parties hereto agree that either party may terminate this Lease at any time during the term hereof by giving written notice to the other party at least ninety (90) days prior to the date when such termination shall become effective.

BREACH

8. In the event of a breach of this Lease by LESSEE, the STATE, in addition to any other rights or remedies it may have, shall have the immediate right of re-entry and may take possession of the Premises and every part thereof and to remove and restore, at LESSEE'S expense all property therefrom and to repossess and occupy the Premises. In the event STATE terminates this Lease pursuant to this paragraph STATE shall not be required to pay LESSEE any sum or sums whatsoever.

HOLD OVER

9. Any holding over after the expiration of the said term or any extension thereof, with the written consent of the STATE, expressed or implied, shall be deemed a tenancy only from month to month and all other terms and conditions of this Lease shall continue in full force and effect. Hold over rent is immediately due and payable, in advance, on the first day of the month following expiration of the term of this Lease, at the "Fair Market Rent" amount of \$1, 785.00 as referenced in Paragraph 4 "Rent". Hold over rent shall be due and payable to STATE whether or not an actual invoice is sent by STATE or received by LESSEE.

**DECLARATION
OF EMERGENCY**

10. In the event of a Declaration of Emergency by the State or Federal government, which emergency causes it to become appropriate to use the leased Premises for the purposes of protection of the public safety and the safety of the public or preservation of STATE assets, LESSEE shall immediately and fully cooperate with STATE to make the Premises available forthwith for those purposes. LESSEE shall be compensated for any such use only by the abatement of rent liability during the period of time when the Leased Premises are unavailable to LESSEE for LESSEE'S exclusive use. LESSEE shall specifically not be entitled to compensation for 1) lost income which would be derived from the use of the Leased Premises, or 2) any liability to third parties resulting from LESSEE'S inability to meet any contractual obligations. STATE shall be responsible for restoring the Premises to its condition as existed prior to STATE'S use, as described in this section.

**JANITORIAL
SERVICES**

11. LESSEE at LESSEE'S sole cost and expense, during the term of this Lease, shall hire janitorial services sufficient to maintain the interior of the Premises in a clean and well maintained condition and properly dispose of all trash.

SECURITY

12. LESSEE understands and agrees that STATE will not provide any security support for any activities on the Premises. LESSEE agrees to be responsible for security for any and all activities on the Premises, and agrees to notify the appropriate law enforcement agencies as required.

**SMOKING
RESTRICTION**

13. Per Section 7589 Paragraph (a) of the California Government Code, no public employee or member of the Public shall smoke any tobacco product inside a public building, or in an outdoor area within 20 feet of any main entrance or operable window, of a public building.

**OPERATIONS
DESIGNATE**

14. LESSEE shall designate, in writing to State, a representative who shall be responsible for the day-to-day operation, maintenance, cleanliness and general order of the Premises, and include the representative's contact information, including daytime telephone number, fax number and email address. If the said representative is not an on-site representative, LESSEE also agrees to provide the name and contact information for LESSEE'S on-site representative(s).

**ADMINISTRATION
FEE**

15. A one-time charge of THREE THOUSAND AND NO/100 DOLLARS (\$3,000.00) to cover STATE'S cost associated with the preparation of this Lease will be paid by LESSEE to STATE prior to execution of this Lease.

ASSIGNMENT

16. LESSEE shall not either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease and shall not sublet the Premises, in whole or in part, or allow any person other than the LESSEE'S employees, agents, servants, and invitees to occupy or use all or any portion of the Premises without the prior written consent of the STATE, which consent shall not be unreasonably withheld.

The following shall be deemed to be an assignment or transfer within the meaning of this Lease:

- a) If LESSEE is a corporation, any dissolution, merger, consolidation or other reorganization of LESSEE or sale or other transfer of a percentage of capital stock of LESSEE which results in a change of controlling persons, or the sale or other transfer of substantially all the assets of LESSEE;
- b) If LESSEE is a partnership, a transfer of any interest of a general partner, a withdrawal of any general partner from the partnership or the dissolution of the partnership.

SUBLETTING

17. a) LESSEE may, from time to time, sublet the Premises or any part thereof. LESSEE agrees that if it enters into subletting arrangements for the use of the Premises, any activities held on the Premises shall be considered "LESSEE-sponsored" events and LESSEE and/or SUBLESSEE shall retain all liability for any accidents and/or damages to persons or understands and agrees that STATE will in no event be held liable for any accidents or damages to persons or property resulting from any "LESSEE-sponsored" activities.

- b) All subletting fees, minus expenses, are to be divided between STATE and LESSEE with 40% being payable to the STATE and the LESSEE retaining the remaining 60%. LESSEE will make its records of subletting available at any reasonable time for inspection by STATE and will provide to STATE routine documentation of licensed events and accounting of funds received by LESSEE.

Payment shall be made quarterly, based upon the Lease term, to the address below:

Military Department
P. O. Box 269101 (L-2397)
Facilities (Box 18)
Sacramento, CA 95826-9101

NOTICES

18. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below.

All such notices or other communications shall be deemed received upon the earlier of (i) if personally delivered or sent by overnight courier, the date of delivery to the address of the person to receive such notice, or (ii) if mailed as provided above, on the date of receipt or rejection, when received by the other party if received Monday through Friday between 8:00 a.m. and 5:00 p.m. Pacific Standard Time, so long as such day is not a state or federal holiday and otherwise on the next day provided that if the next day is Saturday, Sunday, or a state or federal holiday, such notice shall be effective on the following business day.

To the LESSEE: City of Lodi
Parks and Recreation
125 N. Stockton Street
Lodi, California 95240
(209) 333-6742

To the STATE: Department of General Services
Real Estate Services Division – SOLD (L-2015)
State Owned Leasing and Development
707 Third Street, MS 505
P. O. Box 989052
West Sacramento, CA 95798-99052
(916) 375-4040

To the STATE: Department of the Military
P. O. Box 269101
Facilities (Box 18)
Sacramento, CA 95826
(916) 854-3585

Notice of change of address shall be given by written notice in the manner described in this section. LESSEE is obligated to notice all state offices listed above and the failure to provide notice to all State offices will be deemed to constitute a lack of notice.

The address to which notices shall be mailed as aforesaid to either party may be changed by written notice given by subject party to the other, as hereinbefore provided; but nothing herein contained shall preclude the giving of any such notice by personal service.

**REPAIR AND
MAINTENANCE**

19. LESSEE shall not call on STATE to make any improvements or repairs on said Premises, but LESSEE agrees to keep the same in good order and condition at its own expense. LESSEE does hereby waive all rights to make repairs at the expense of the STATE as provided in Section 1942 of the Civil Code and all rights provided for by Section 1941 of said Civil Code. LESSEE must obtain written approval from the STATE prior to commencing any improvements or repairs to the leased Premises.

a) LESSEE shall continue to maintain said Premises in good repair and tenable condition and in compliance with all health, safety and sanitation laws, ordinances and regulations of the State of California and local authorities.

b) Nothing in this Section shall be construed to permit LESSEE to undertake any alterations, additions or improvements, to the Premises or any part thereof without first obtaining STATE'S prior written consent, including submitting plans and specification for approval prior to commencement of any construction activity on the Premises.

**PROPERTY
INSPECTION**

20. LESSEE has visited and inspected the Premises and it is agreed that the area described herein is only approximate and the STATE does not hereby warrant or guarantee the actual area included hereunder.

**ABANDONMENT
OF PREMISES**

21. Failure by LESSEE to occupy and/or use the Premises for a period of thirty (30) days or longer shall constitute abandonment by LESSEE. If LESSEE abandons, vacates or surrenders the Premises, or is disposed by process of law, any personal property belonging to LESSEE and left in the Premises shall be deemed to be abandoned, at the option of the STATE.

**HOLD HARMLESS
/ CROSS
INDEMNITY**

22. This Lease is made upon the express condition that the State of California is to be free from all liability and claims for damages by reason of any injury to any person or persons, including LESSEE, or property of any kind whatsoever and to whomsoever belonging, including LESSEE, from any cause or causes whatsoever while in, upon or in any way connected with the premises during the term of this Lease or any occupancy hereunder, except those arising out of the sole negligence of the STATE.

a) Each party agrees to indemnify and defend the other in the event of any claim, demand, cause of action, judgments, obligations or liabilities, and all reasonable litigation and attorneys' expenses which said party may suffer as a direct and proximate result of the violation of any law, breach of any terms of this Lease, negligence or other wrongful act by a party to this Lease or such party's employees, representatives, contractors, or any other person or persons acting within the direct control or authority of such party or its employees.

INSURANCE

23. STATE acknowledges that LESSEE is self-insured: Prior to the execution of the Lease, LESSEE shall furnish to STATE documentation verifying the required insurance limitation pursuant to item (h) of this clause and binding said insurance coverage to STATE'S Lease number L-2015.

COMMERCIAL GENERAL LIABILITY

Provider shall maintain Commercial General Liability and Fire Legal Liability with limits of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) aggregate for bodily injury and property damage liability combined per

**INSURANCE
(CONT)**

occurrence. The policy shall include coverage for liabilities arising out of Premises, operations, independent contractors, products, completed operations, personal and advertising injury and liability assumed under an insured contract. It shall also include an endorsement for physical abuse and sexual molestation coverage. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Provider's limit of liability.

This policy must include State of California, Department of General Service and their officers, agents, employees and servants as additional insured, but insofar as the operations under this Lease are concerned.

AUTOMOBILE LIABILITY

The provider shall maintain motor vehicle liability with limits of not less than ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) per accident for bodily injury and property damage. The State of California and the Department of General Services are to be additional insured with respect to liability arising out of all vehicles owned, hired and non-owned.

WORKER'S COMPENSATION

LESSEE shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Lease, including special coverage extensions where applicable. Employer's liability limits of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) shall be required and the policy shall include a waiver of subrogation in favor of the State of California.

GENERAL REQUIREMENTS

LESSEE shall ensure that the following general requirements are met:

- a) Insurance Companies must be acceptable to the Department of General Services, Office of Risk and Insurance Management.
- b) LESSEE shall provide the STATE with a true copy of the certificate in place providing coverage for General Liability, within thirty (30) days after each insurance renewal.
- c) Coverage needs to be in-force for the complete term of the Lease. If insurance expires during the term of the Lease, a new certificate must be received by the STATE at least thirty (30) days after the expiration of the insurance. The new insurance must meet the terms of the original contract.
- d) Certificate of insurance shall contain a provision that coverage will not be cancelled without thirty (30) days prior written notice to the STATE.
- e) LESSEE is responsible for any deductible of self-insurance retention contained within the insurance program.
- f) in the event LESSEE fails to keep in effect at all times the specified insurance coverage, the STATE may, in addition to any other remedies it may have, terminate the Lease upon the occurrence of such event, subject to the provisions of the Lease.
- g) Any insurance required to be carried shall be primary, and not excess, to any other insurance carried by the STATE.

**INSURANCE
(CONT)**

- h) When LESSEE is self-insured in whole or in part as to any of the above described types and levels of coverage, LESSEE shall provide the STATE with written acknowledgement of this fact at the time of execution of the Lease. If, at any time after the execution of the Leases, LESSEE abandons its self-insured status, LESSEE shall immediately notify STATE of this fact and shall comply with all of the terms and conditions of this Insurance paragraph 27 pertaining to policies of insurance in regard to those types and levels of insurance.

It is agreed that STATE shall not be liable for the payment of any premiums or assessments on the required insurance coverage.

**FIRE AND
CASUALTY
INSURANCE**

24. STATE will not keep said Premises insured against fire or casualty and LESSEE will make no claim of any nature against STATE by reason of any damage to the business or property of LESSEE in the event of damage or destruction by fire or other cause, arising other than from, or out of the sole negligence or willful misconduct of agents or employees of the State of California in the course of their employment.

**WAIVER OF
SUBROGATION**

25. STATE and LESSEE hereby waive and right of recovery against the other as a result of loss and damage to the property of either STATE or LESSEE when such loss or damage arises out of an act of Nature or any of the property perils insurable under extended coverage, whether or not such peril has been insured, self-insured or non-insured.

**PERSONAL
PROPERTY**

26. STATE will not be responsible for losses or damage to personal property, equipment or materials of LESSEE and all losses shall be reported to STATE immediately upon discovery.

Upon termination of this Lease for any cause, LESSEE shall remove any and all personal property and LESSEE shall restore any damage caused by said removal. Except, however, STATE may approve, in writing, any deviation from this requirement.

**COMPLIANCE
WITH LAWS**

27. LESSEE shall, at its sole cost and expense, comply with all the laws and requirements of all Municipal, State and Federal Authorities now in force, as applicable to the United States, or which may hereafter be in force pertaining to the Premises and use of the Premises as provided by this Lease.

**RECOVERY OF
LEGAL FEES**

28. If action is brought by the STATE for the recovery of any rent due under the provisions hereof or for any breach hereof, or to restrain the breach of any agreement contained herein, or for the recovery of possession of the Premises, or to protect any rights given to the STATE against the LESSEE, and if the STATE shall prevail in such action, the LESSEE shall pay to STATE such amount of all costs and expenses including attorney's fees in said action, as the court determines to be reasonable, which shall be fixed by the court as part of the costs of said action.

**TAXES AND
ASSESSMENTS**

29. LESSEE agrees to pay all lawful taxes, assessments or charges which at any time may be levied upon interest in this agreement. It is understood that this Lease may create a possessory interest subject to property taxation and LESSEE may be subject to the payment of property taxes levied on such interest.

**NON-
DISCRIMINATION**

30. In the performance of this Lease, the LESSEE shall not discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition, age (over 40), marital status, sex, sexual orientation, or use of family care leave. LESSEE shall insure that the evaluation and treatment of its employees and applicants for employment are free from such discrimination and harassment.

Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. LESSEE shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. LESSEE shall give written notice of its obligations under this clause to any labor organizations with which they have a collective bargaining or other Agreement. Further, LESSEE shall post in conspicuous places available to employees and applicants for employment, notices to be provided by the STATE setting forth the provisions of this Fair Employment Practices Section. (Government Code, Section 12920-12994).

Remedies for willful violation:

a) The STATE may determine a willful violation of the Fair Employment Practices provision to have occurred upon the receipt of a final judgment having that effect from a court in an action to which LESSEE was a party, or upon receipt of a written notice from the Fair Employment Practices Commission that it has investigated and determined that the LESSEE has violated the Fair Employment Practices Act and has issued an order pursuant to the appropriate provisions of the Government Code.

b) The STATE shall have the right to terminate this Agreement and any loss or damage sustained by the STATE by reason thereof shall be borne and paid for by the LESSEE.

**DEBT LIABILITY
DISCLAIMER**

31. The STATE will not be liable for any debts or claims that arise from the operation of this Lease.

**PARTNERSHIP
DISCLAIMER**

32. LESSEE and any and all agents of LESSEE shall act in an independent capacity and not as officers or employees of the STATE. Nothing herein contained shall be construed as constituting the parties herein as partners.

ENCUMBRANCES 33. LESSEE and STATE hereby acknowledge and agree that LESSEE does not intend to encumber by deed of trust LESSEE's interest in the Premises, for the purpose of constructing improvements thereon. Any such encumbrance is void without prior written approval from the STATE.

**HAZARDOUS
SUBSTANCES**

34. LESSEE agrees that it will comply with all laws, either Federal, State, or local, existing during the term of this Agreement pertaining to the use, storage, transportation, and disposal of any hazardous substance as that term is defined in such applicable law.

a) In the event STATE, or any of their respective affiliates, successors, principals, employees, or agents should incur any liability, cost, or expense, including attorney's fees and costs, as a result of the LESSEE'S illegal or alleged illegal use, storage, transportation, or disposal of any hazardous substance, including any petroleum derivative, the LESSEE shall indemnify, defend, and hold harmless any of these individuals, and entities, against such liability.

b) Where the LESSEE is found to be in breach of this provision due to the issuance of a government order directing the LESSEE to cease and desist any illegal action in connection with a hazardous substance, or to remediate a contaminated condition caused by the LESSEE or any person acting under LESSEE'S direct control and authority, LESSEE shall be responsible for all costs and expenses of complying with such order, including any and all expenses imposed on or incurred by STATE in connection with or in response To such government order.

c) In the event a government order is issued naming the LESSEE, or the LESSEE incurs any liability, during or after the term of the Agreement, in connection with contamination that pre-existed, the LESSEE's obligations and occupancy under this Agreement or which were not caused by the LESSEE, STATE shall hold harmless, indemnify, and defend the LESSEE in connection therewith and shall be solely responsible as between LESSEE and STATE for all efforts and expenses therefore.

**ASBESTOS/LEAD
BASED PAINT
AND SEISMIC
DISCLOSURE**

35. LESSEE, by acceptance of this Lease, is hereby notified and informed that the leased building may contain asbestos, lead based paint or may have seismic deficiencies and/or may not comply with the ADA requirements. Upon any changes or alterations to the existing structure it shall be the sole responsibility of LESSEE for any and all asbestos and/or lead based paint containment and removal requirements LESSEE acknowledges that LESSEE is leasing and accepting the building in its "as-is" condition and shall hold harmless the State of California, its officers, agents and employees of all liability which may occur to any real or personal property or persons by the presence of any asbestos currently in or on the Premises.

**EASEMENTS AND
RIGHTS OF WAY**

36. This Lease is subject to all existing easements and rights of way. STATE further reserves the right to grant additional public utility easements as may be necessary, whether recorded or unrecorded, and LESSEE hereby consents to the granting of any such easement. Any public utility requesting an easement will be required to reimburse LESSEE for any damages caused by the construction work on the public utility easements.

**INSPECTIONS/
AUDITS**

37. All books, account records, files and other reports relating to this agreement shall be subject at all times to inspection and audit by either party during the term of the Lease and for a period of five (5) years after completion of this agreement.

WAIVER

38. If the STATE waives the performance of any term, covenant or condition contained in this Lease, such waiver shall not be deemed to be a waiver of that or any subsequent term, covenant or condition. Failure by STATE to enforce any of the terms, covenants or conditions of this Lease for any length of time shall not be deemed to waive or decrease STATE's right to insist thereafter upon strict performance by LESSEE. Waiver by STATE of any term, covenant, or condition contained in this Lease may only be made by a written document properly signed by an authorized STATE representative.

AUTHORITY

39. If LESSEE is a public, private or non-profit corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of said corporation in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the Bylaws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms.

a) If LESSEE is a corporation, LESSEE shall submit directly to the STATE a certified copy of the resolution of the Board of Directors of said corporation authorizing or ratifying the execution of this Lease. Said resolution shall be delivered previous to the execution of this Lease.

FORCE MAJURE

40. If either the LESSEE or STATE shall be delayed or prevented from the performance of any act required hereunder by reason of acts of Nature, governmental restrictions, regulations or controls (except financial inability), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of delay. Nothing in this clause shall excuse LESSEE from prompt payment of any rents, taxes, insurance or other charge required of LESSEE, except as may be expressly provided in this Lease.

BINDING CLAUSE

41. The terms of this Lease and covenants and agreements herein contained shall apply to and shall bind and inure to the benefit of the heirs, representatives, assigns, and successors in interest of the parties hereto.

SEVERABILITY

42. If any provision of this Lease is determined to be illegal or unenforceable, this determination shall not affect any other provision of this Agreement, and all other provisions shall remain in full force and effect.

NO SMOKING

43. Smoking is not allowed in or upon the Premises. LESSEE will enforce the smoking prohibition inside the occupied space and within 25 feet of any entrance in regards to LESSEE's employees, customers and invitees.

**ENTIRE
AGREEMENT**

44. This Lease, together with its exhibits, constitutes the entire agreement between STATE and LESSEE. No prior written or contemporaneous or subsequent oral promises or representations shall be binding. This Lease shall not be amended or changed except by written instrument signed by authorized representatives of the parties hereto. The provisions of this Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties.

**ESSENCE OF
TIME**

45. Time is of the essence of each and all of the provisions, covenants and conditions of this agreement.

**SECTION
HEADINGS**

46. All section headings contained herein are for convenience of reference only, and are not intended to define or limit the scope of any provisions of this Agreement.

COUNTERPARTS

47. This Lease may be executed in separate counterparts, each of which when so executed, shall be deemed to be an original. Such counterparts shall, together, constitute and be one and the same instrument.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

This Agreement, together with its exhibits, contains all the agreements of the parties hereto and supersedes any prior Agreement or negotiations. There have been no representations by the STATE or understandings made between the STATE or LESSEE other than those set forth in this Agreement and its exhibits. This Agreement may not be modified except by a written instrument duly executed by the parties hereto.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date listed below.

**STATE OF CALIFORNIA
APPROVED:**

DIRECTOR OF DEPARTMENT OF
GENERAL SERVICES

By: _____
TONY PSIHOPAIDAS, Manager
State Owned Leasing and Development

Date Executed: _____

LESSEE:

CITY OF LODI, a political subdivision
of the State of California


By: _____

CONSENT:

CALIFORNIA MILITARY DEPARTMENT

By: _____
THOMAS E. CLARKE, CW3
Contracting Officer

APPROVED AS TO FORM:

By: _____
City Attorney


APPROVAL RECOMMENDED:

DEPARTMENT OF GENERAL SERVICES
REAL ESTATE SERVICES

By: _____
JESLYN MCCOMAS
Associate Real Estate Officer

ATTEST:

By: _____
City Clerk

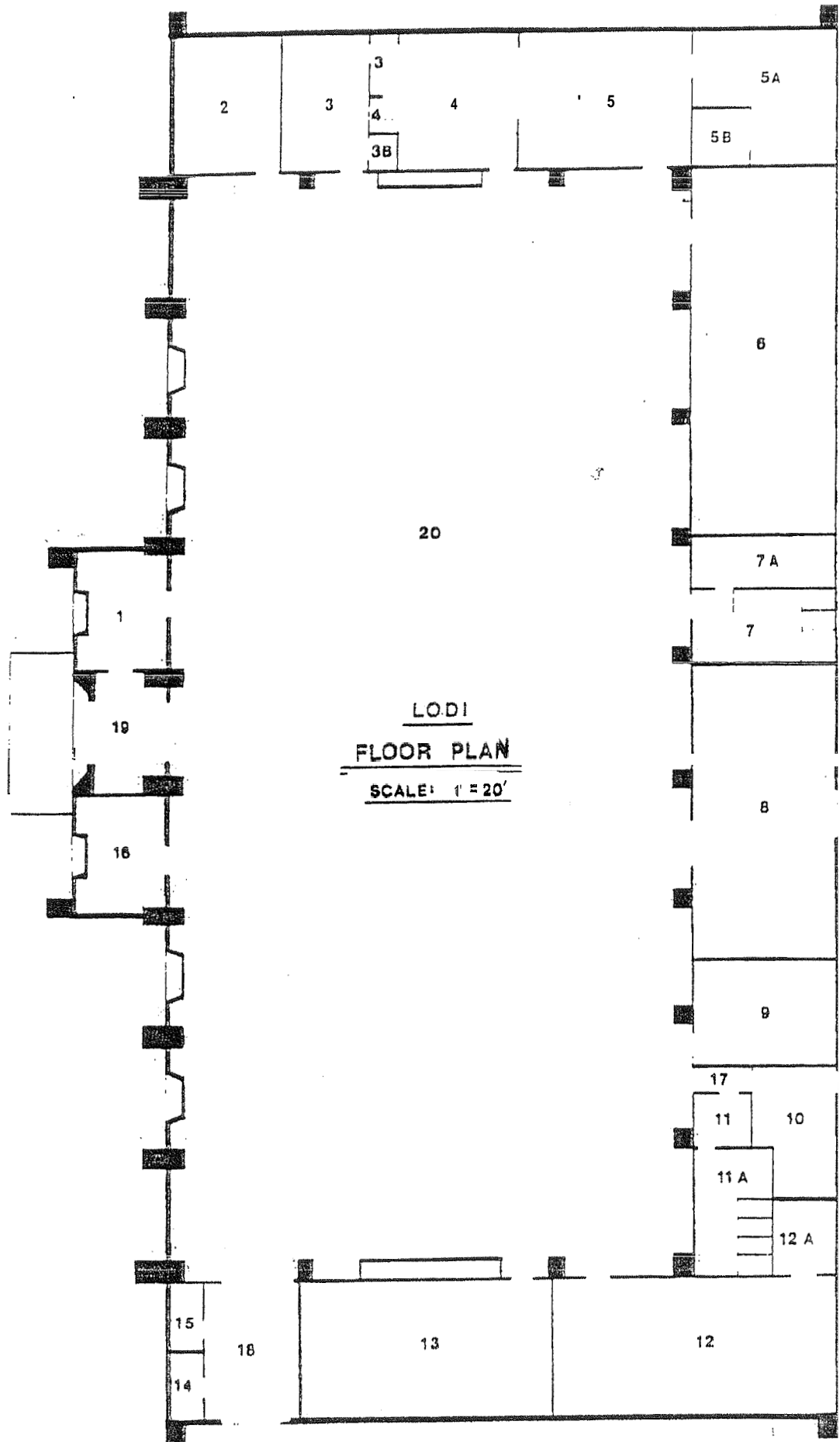


EXHIBIT A

EXHIBIT B / Maintenance Responsibilities

LESSEE is responsible for maintaining the following and/or keeping them clean and in good working order and condition in accordance with the following schedule:

1. Landscaping services of the grounds surrounding premises (not including motor pool area)– to include mowing, edging, blowing, weed abatement and pruning trees/shrubs only during the growing season (approximately 43 weeks per year).
2. Gymnasium Floor: Basic cleaning such as sweeping and mopping not less than three times weekly during periods of use. (Frequency of use will be determined by mutual agreement between the LESSEE and Armory Board members.
3. Basketball backboards, rims and netting: as required
4. ADA bathrooms: Weekly sanitation and daily cleaning when in use.
6. If used, "Day" room located between the bathrooms: Basic cleaning after each use.
7. Office space used by LESSEE: weekly cleaning.
8. Trash receptacles: emptied daily during use.
9. Janitorial room: AS REQUIRED
10. Grounds maintenance: pick up and disposal of debris, trash, empty cans etc: after each use.

EXHIBIT C

Lodi Armory Rent Calculation

Rent per month based on Fair Market Value (.35 x 10,199 = 50% (disruption clause)	\$1,785 (rd)
Less:	
Maintenance Allowance	<u>-600</u>
Balance:	\$1,185

Therefore, net monthly rent is \$1,185.

RESOLUTION NO. 2010-18

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE
CITY MANAGER TO EXECUTE LEASE AGREEMENT BETWEEN THE
CITY OF LODI AND THE STATE OF CALIFORNIA, ACTING BY AND
THROUGH ITS DIRECTOR OF GENERAL SERVICES, WITH THE
CONSENT OF THE MILITARY DEPARTMENT FOR USE OF THE
NATIONAL GUARD ARMORY BUILDING

=====

WHEREAS, negotiations have been ongoing between the City of Lodi and the State of California regarding a lease agreement for joint use of the Armory facility located at 333 N. Washington Street, Lodi, CA; and

WHEREAS, elements of the lease include a five-year term; City use of 10,200 square feet of common area (gymnasium area, two offices, meeting room, kitchen, restrooms, and a storage room); and a monthly lease payment of \$1,185 per month; and

WHEREAS, the building will be used for a wide variety of athletic and recreational activities for youth and adults on a year-round basis. Programs include basketball, volleyball, open gym hours, and various recreational classes. Other intentions for use of the facility would include community needs and events such as dances as well.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute the lease agreement between the City of Lodi and the State of California, acting by and through its Director of General Services, with the consent of the Military Department for use of the National Guard Armory building located at 333 N. Washington Street, Lodi, California, for a period of five years.

Dated: February 17, 2010

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I hereby certify that Resolution No. 2010-18 was passed and adopted by the City Council of the City of Lodi in a regular meeting held February 17, 2010, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Mounce,
and Mayor Katzakian

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None


RANDI JOHL
City Clerk